



Dvora Wolff Rabino
General Attorney
Law & Regulation

August 28, 1995

RECEIVED

AUG 28 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 95-90

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in MM Docket No. 95-90.

Please contact me if the Commission has any questions about this filing.

Respectfully submitted,

Dvora Wolff Rabino

Dvora Wolff Rabino

Enclosures

No. of Copies rec'd CL5
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 28 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 95-90
Regulations Governing Broadcast)
Television Advertising)

COMMENTS OF CAPITAL CITIES/ABC, INC.

Sam Antar
Vice President, Law & Regulation

Dvora Wolff Rabino
General Attorney, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

August 28, 1995

TABLE OF CONTENTS

	Page
Summary of Argument.....	2
Argument.....	4
A. Neither the Network Advertising Representation Rule Nor the Network Control of Station Rate Rule Is Necessary Because The National Advertising Market Is Broad and Unconcentrated and Will Not Allow Collusive Conduct	4
B. The Rules Are Unnecessary Because Networks Lack the Ability to Force Affiliated Stations to Accept Them as Their Representatives Or to Raise Station Prices Above Competitive Levels.....	14
C. Eliminating Both the Network Advertising Representation Rule and the Network Control of Advertising Rates Rule Would Have No Significant Impact on Diversity.....	17
D. Allowing Networks the Opportunity to Represent Their Affiliates Would Enhance Competition and Would Serve the Public Interest.....	19
Conclusion.....	25

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
AUG 28 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 95-90
Regulations Governing Broadcast)
Television Advertising)

To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC"), the owner of major market television stations and of the ABC Television Network, which has over 200 affiliates throughout the country, submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM" or "Notice") in MM Docket No. 95-90, released June 14, 1995. Capital Cities/ABC's interest in this proceeding stems from its interest in eliminating rules that single out network companies for regulatory restrictions on their business opportunities based on outdated concepts of network power. If the rules at issue in this proceeding were eliminated, Capital Cities/ABC would be free to explore the business opportunity of acting as a national spot representative not only for its owned stations, which it already represents, but also for its non-owned affiliated stations. This would enhance competition by expanding the representation options available to affiliated stations.

SUMMARY OF ARGUMENT

The Commission asks in its Notice whether section 73.658(i) of the Commission's rules, which prohibits networks from representing non-owned affiliates in the sale of non-network advertising time, and section 73.658(h), which prohibits networks from influencing or controlling rates charged by affiliates for non-network advertising time, "continue to effectively serve [the] Commission's cornerstone interests of promoting diversity and competition." NPRM ¶ 2. Our answer is a resounding no. In the current national advertising marketplace, the "network control of advertising rates" rule is unnecessary because no network has the power to wield such control, and the "network advertising representation" rule hinders rather than promotes competition and does nothing to promote diversity.

Since the rules were adopted, the Fox network has become a full-fledged fourth network, the United Paramount Network ("UPN") and Warner Brothers ("WB") networks have been launched, the number of stations not affiliated with the original three networks has jumped over 500 percent, and other forms of video advertising, including barter syndication and cable network, as well as nonvideo forms of national advertising, have either emerged or become stronger competitors for national advertising dollars. These dramatic developments have eliminated any real chance -- if indeed there ever was one -- that a network and its affiliated

stations could dominate the national advertising market. Furthermore, because of the complexity and variety of station and network advertising price structures, it would be difficult if not impossible for a network and its affiliates to negotiate, monitor and enforce an agreement to set their collective prices above competitive levels.

In addition, networks lack the ability to force affiliated stations to accept them as their representatives or to raise station spot prices above competitive levels to the stations' disadvantage in order to gain advantages for the network in its sale of network time. Allowing network rep firms to represent their affiliates would have no adverse impact on the diversity of television programming because control over programming, like control over pricing, rests with the licensee, not its commissioned sales representative or the network with which it is affiliated. Finally, allowing networks to enter the national advertising representation business would serve the public interest in that it would interject potential new competitors into an increasingly concentrated market.

ARGUMENT

- A. Neither the Network Advertising Representation Rule Nor the Network Control of Station Rates Rule is Necessary Because The National Advertising Market Is Broad and Unconcentrated and Will Not Allow Collusive Conduct.

The "network control of station rates" rule, section 73.658 (h), and the "network advertising representation rule," section 73.658(i), were adopted in the 1940s and 1950s based in large part on Commission determinations that "network sales and station spot sales were at that time the only competing modes of national television advertising" and that a network, if it represented its affiliated stations in national spot sales, would have the incentive and capacity either unilaterally or in collusion with its affiliates to raise network and national spot prices above competitive levels.¹ The Commission also found that the networks had the ability potentially to restrain competition by using their network affiliations to influence the stations' choice of a spot representative.²

In this section we will show that in today's national advertising market, the core premise that a network, alone or in concert with its affiliates, has the power to raise prices

¹ See NPRM ¶¶ 8, 13; In the Matter of Amendment of Section 3.658 of the Commission's Rules to Prohibit Television Stations Other Than Those Licensed To An Organization Which Operates A Television Network, 27 F.C.C. 697 (1959) ("1959 Report and Order"); Report on Chain Broadcasting, Commission Order No. 37, Docket No. 5060.

² 1959 Report and Order, ¶ 36.

above competitive levels is insupportable. In Section B, we will show that networks today do not have the ability to force client stations to accept them as their representatives or to force anticompetitive prices on them and thereby to restrain competition.

Economists, Inc. submitted an analysis of the national advertising market on behalf of Capital Cities/ABC (and CBS, NBC and Westinghouse) in connection with the Commission's pending ownership proceeding.³ That analysis, hereinafter referred to as the "EI Ownership Study," concluded that a properly defined market for national advertising should include, in addition to network advertising, all other media that constrain the prices charged for network advertising because they provide reasonably interchangeable substitutes for advertisers.

Two facts deserve first mention to illustrate the expansion in the national advertising market since 1959, when the network advertising representation rule was first adopted -- the increase in the number of networks on which to place national network advertising and the doubling of the number of television stations contributing to national spot advertising.⁴ These two factors have made broadcast network

³ An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, May 17, 1995.

⁴ See Report and Order in re Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, MM Docket No. 94-123 (July 31, 1995) at ¶¶ 27-28, 70 (hereinafter "PTAR Report

and national spot broadcast far broader categories than ever before.

Whatever one's view of the other components of the market there can be little doubt that both network and national spot belong in the national television advertising market. As documented in detail in the EI Ownership Study, many advertisers use national spot as a substitute or supplement for network advertising. The same national advertisers typically use both network and spot advertising, with the extent of use of each a function of the trade-off between cost and reach. Some advertisers decide how to allocate their national advertising budget by balancing the higher cost per thousand viewers of national spot advertising against the opportunity national spot affords them to avoid wasted coverage in parts of the country where the advertiser has poor sales prospects.⁵ Still others turn to national spot when

and Order"). In 1959, there were three television networks and only 510 full-power commercial stations nationwide. Now, with the emergence of Fox and launching of Warner Brothers and United Paramount, there are six networks, and there are 1,156 full-power commercial stations. The number of full-power commercial television stations not affiliated with any of the three major networks skyrocketed from 1969-70, when there were 99 independent stations, to 1979-80, when there were 131, to the present time, when there are 506. Television & Cable Factbook, 1995; Nielsen Station Index, 1969-70, 1979-80, 1994-95. To these independent stations should be added over 350 low-power commercial television stations, most of which do not obtain programming from any of the broadcast networks. Nielsen Station Index, 1994-95.

⁵ EI Ownership Study at D-3 to D-4.

network time (typically sold earlier, through "upfront" sales) is sold out.⁶

However, the national video advertising marketplace today embraces much more than just network and national spot broadcast. As the Commission tentatively recognized in its ownership notice,⁷ today barter syndication competes with network advertising for national video advertising budgets. According to the EI Ownership Study, the top 20 syndicated programs (including Wheel of Fortune, Jeopardy!, and the Oprah Winfrey Show) clear 90 to 99.5 percent of television households and thus compare favorably with network programs, which have average clearance rates by their affiliates of 89.7 in non-prime time and 97.7 percent in prime time.⁸ Advertising on syndicated programs with lower coverage can be supplemented with spot advertising in any desired areas that are not covered.⁹ There are 160 syndicated programs, with an average household rating of 2.3, that reach more than 50 percent of television households.¹⁰ Sales marketing materials and anecdotal evidence confirm that sellers of syndication,

⁶ See Broadcasting, April 16, 1984, p. 39 (Petty television executive noted that demand had recently increased for national spot advertising in part because "both network and barter have been extremely tight").

⁷ Further Notice of Proposed Rulemaking in MM Docket No. 91-221 (released January 17, 1995) at ¶ 37.

⁸ EI Ownership Study at D-6 through D-8.

⁹ EI Ownership Study at D-9.

¹⁰ EI Ownership Study at D-9.

network and national spot, and their buyers, see the three forms of national television advertising as closely interchangeable and competitive.¹¹

Cable network advertising also competes with television network advertising in the national video advertising marketplace, as the Commission tentatively concluded in its Notice of Proposed Rulemaking in the ownership proceeding.¹² Cable network advertising reaches the vast majority of cable subscribers; approximately 92 percent of cable network advertising revenue is earned by the 16 national advertising-supported basic cable networks that reach 80 percent or more of cable subscribers.¹³ Sales promotional materials produced by both broadcast and cable networks indicate that both groups believe they are competing against each other; and anecdotal evidence confirms that advertisers shift from broadcast to cable in response to relative changes in their cost and in the programs and audiences available in each.¹⁴ National spot cable is also becoming a closer substitute for national spot broadcast and, based on its growing potential, should be included in a forward-looking market analysis.¹⁵

¹¹ EI Ownership Study at D-9 through D-11.

¹² Further Notice of Proposed Rulemaking in MM Docket No. 91-221 (released January 17, 1995) at ¶ 37 & n. 66.

¹³ EI Ownership Study at D-11 through D-12, Appendix Table E-9.

¹⁴ EI Ownership Study at D-15 through D-16, Appendices I-L.

¹⁵ EI Ownership Study at D-12 through D-13, Appendices J-K.

In our view, and as the EI Ownership Study demonstrates, at a minimum the national advertising market should include broadcast network, national spot broadcast, barter syndication, cable network and national spot cable.¹⁶ Under that market definition, concentration in the advertising marketplace as measured in 1993 by the Herfindahl-Hirschman Index ("HHI") (the sum of the squared market shares of each firm in the market) is well below 1,000 -- a level too low to warrant even further investigation for anticompetitive effects, under the United States Department of Justice/Federal Trade Commission 1992 Merger Guidelines.¹⁷ The Commission's tentative definition of the national advertising market in the ownership proceeding excluded national spot cable and national spot broadcast.¹⁸ But since national spot cable represents a small segment of the national television advertising market, the HHI analysis would not be significantly affected were it excluded.¹⁹ Further, if the Commission concludes that national spot broadcast does not compete with network, such a finding

¹⁶ EI Ownership Study at 20-22 and Appendix D. The Study makes a persuasive case that the relevant market should include various non-video media as well, including national radio, newspapers and magazines. *Id.* at 22, D-18 through D-26. If one accepts that broader definition of the market, maintaining the rules at issue has not a shred of justification.

¹⁷ See EI Ownership Study at 5, 28, Appendix Table E-2.

¹⁸ Further Notice of Proposed Rulemaking in MM Docket No. 91-221 (released January 17, 1995) at ¶ 37.

¹⁹ EI Ownership Study, Appendix Table E-2 (national spot cable roughly 1.4% of national television advertising market).

would substantially eliminate any continuing need for the rules at issue, as the Commission has acknowledged.²⁰

Indeed, the Commission itself (while reserving final judgment for a later proceeding) tentatively concluded in its Report and Order repealing the prime time access rule ("PTAR") that the networks do not dominate the national television advertising market.²¹ In sum, national video advertising, viewed as a separate market -- even without taking into account nonvideo forms of national advertising -- is so broad and unconcentrated that if networks were to sell national spot advertising on behalf of their affiliate stations, they could not dominate the marketplace so as to endanger competition.

That conclusion is reinforced by evidence that suggests the national advertising market is actually much broader than video media alone.²² Radio, for example, supplies significant national advertising alternatives to television through national radio networks, "unwired" radio networks, and national radio advertising representatives.²³ Newspapers, too, provide opportunities for national advertising through newspapers with a national reach such as The Wall Street Journal and USA Today; through newspaper magazine networks such as Parade Publications and USA Weekend; through "unwired"

²⁰ NPRM ¶ 26.

²¹ PTAR Report and Order, ¶¶ 37-38 & nn. 91-92.

²² EI Ownership Study at D-18 through D-28, Appendices M-R.

²³ EI Ownership Study at D-21.

networks of local newspapers, which sometimes approach the household reach of broadcast television stations by supplementing their newspaper ads with free-standing advertising delivered to nonsubscribers; and through national newspaper advertising sales representative firms such as Newspapers First.²⁴ Magazine advertising is virtually all national; indeed, some advertising agencies claim that a full-page, four-color ad in leading news and general interest magazines such as Time, Newsweek, U.S. News and World Report, Readers Digest, National Geographic, Better Homes and Gardens, and Playboy is more effective than broadcast television advertising at a lower cost.²⁵ Outdoor advertising (typically by national chains), yellow page advertising, direct mail advertising, and even non-advertising promotional vehicles such as contests and couponing are also effective vehicles for reaching a national group of prospective consumers.²⁶

Sales promotional materials demonstrate that nonvideo advertising outlets such as those described above believe they are competing with video entities for the same advertising dollars, and vice versa.²⁷ Indeed, advertisers that use video media also typically make use of these other, nonvideo media,

²⁴ EI Ownership Study at D-21 through D-24.

²⁵ EI Ownership Study at D-24.

²⁶ EI Ownership Study at D-24 through D-28.

²⁷ EI Ownership Study at D-18 through D-28, Appendices M-R.

shifting among the various video and nonvideo alternatives depending on the relative price and efficacy of each.²⁸

When the above-described nonvideo national advertising outlets are taken into account, the level of concentration in the national advertising marketplace as measured by the HHI drops to under 200.²⁹ In sum, the national ad market is so unconcentrated that eliminating the "network advertising representation" rule would pose no threat to competition.

In addition to the lack of concentration in the national ad market, there is another, independent reason why the conduct of a network organization representing its affiliates in the sale of national spot should raise no antitrust concern under prevailing antitrust standards. As a practical matter, each station and network sets its own rates based on the interplay of a wide variety of factors such as the number and percentage of homes an ad is expected to reach, the demographic characteristics of the expected audience, the certainty of that audience delivery, the likelihood of preemption, the size of the order, the degree of advance notice provided, and the amount of inventory available relative to the demand.³⁰ Given the complexity and variety of station and network advertising price structures, it would be exceedingly difficult for stations and a network to reach an

²⁸ Id.

²⁹ EI Ownership Study at 28, Appendix Table E-6.

³⁰ See EI Ownership Study at pp. 34-36.

agreement on appropriate prices for the full array of potential advertising agreements. Monitoring themselves and each other to determine whether any given contract violated the terms of their anticompetitive agreement would be more difficult still.

In repealing the Golden West rule barring a company owned by a broadcast station from representing another broadcast station in the same market, the Commission itself recognized that even then, in 1981, "[t]he acknowledged competition among radio stations and among video services would suggest that the prospects for collusive behavior is not pervasive because it would require a great deal of effort to coordinate the behavior of such a large number of competing stations or station outlets."³¹ Moreover, inclusion of a significant portion of the nonbroadcast and nonvideo media with which television also competes in any scheme to fix prices would be such a logistical and negotiating nightmare in light of each medium's entirely dissimilar price structure that even companies predisposed to illegal behavior would be unlikely to attempt, let alone achieve, such an ambitious scheme.

³¹ In the Matter of Representation of Stations by Representatives Owned by Competing Stations in the Same Area ("Golden West Repeal"), 87 F.C.C.2d 668, 49 R.R.2d 1705, 1713 ¶ 25 (1981).

B. The Rules Are Unnecessary Because Networks Lack the Ability to Force Affiliated Stations to Accept Them As Their Representatives or to Raise Station Prices Above Competitive Levels.

In adopting and maintaining the "control of station rates rule," section 73.658(h), the Commission expressed a concern that a network company could unilaterally fix its affiliated stations' spot prices above competitive levels to give a competitive advantage to its network sales efforts.³² Then, in adopting the "network advertising representation rule," section 73.658 (i), in 1959, the Commission considered whether or not "the networks have restrained competition for the representation of stations in spot sales by using their ability to refuse or terminate a network affiliation to influence stations in their selection or retention of a spot sales representative."³³ Even though the Commission concluded there was no evidence to support such a conclusion, nevertheless it found that the potential for restraint of competition existed.³⁴ That is no longer the case today.

No network today enjoys significant market power over station outlets.³⁵ The alternative of affiliation with other networks provides a powerful check on any attempt by a network

³² See NPRM ¶¶ 5-7 and accompanying footnotes.

³³ 1959 Report and Order, ¶ 33.

³⁴ Id.

³⁵ See generally Comments of Capital Cities/ABC, Inc. in re Review of the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules, MM Docket No. 94-123 (March 7, 1995), at 7-10.

to use its affiliation as a way to pressure a station to do what is not in its own best interest. The financial rewards of operation as a Fox affiliate are increasingly comparable to those of operation as an affiliate of ABC, CBS or NBC.³⁶ And the result is an unparalleled number of affiliation switches. Since May 1994, some 68 television stations in 37 local markets have changed affiliations.³⁷ This heightened competition for affiliates has caused an increase in network compensation to affiliates on the order of \$200 million or more.³⁸

These facts rebut any suggestion that affiliates operate at the mercy of their networks. While it is undoubtedly true that affiliates need the ready supply of proven programming a network provides, it is equally true that a network needs an effective outlet in substantially all local markets, particularly since the network's ability to offer advertisers full nationwide coverage is a critical advantage in competing against media (such as cable networks) that cannot offer advertisers the same benefit. Given these marketplace facts of life, the notion that networks have the power to force affiliates to choose them as their spot reps or to dictate the

³⁶ Economists Incorporated, An Economic Analysis of the Prime Time Access Rule ("EI PTAR Study"), submitted on behalf of ABC, CBS and NBC in connection with the PTAR proceeding, MM Docket No. 94-123, at 53.

³⁷ PTAR Report and Order at ¶ 106.

³⁸ PTAR Report and Order at ¶ 106 & n.220; EI PTAR Study at 15.

spot prices of the stations they represent is baseless and entirely outdated.

Even if a network had the power to force artificially high national spot prices on its affiliate stations, it could not do so with any success because it could not make such prices stick. As discussed in Section A above, the network and its affiliates face too much competition from other networks, affiliates, independent stations and other national advertising outlets to maintain their prices at anticompetitive levels. The competition between network and national spot is manifest in the promotional material of the Capital Cities/ABC National Television sales department, which represents the company's owned stations. That material urges advertisers to move some of their budgets from network to national spot advertising because for some advertisers, customers are concentrated in the top markets rather than distributed equally across the country, and a top-market national spot approach is more cost-effective than a network approach at targeting those customers.³⁹

To the extent that any risk of anticompetitive conduct or unfair competition remains, federal and state antitrust laws are an adequate remedy. The Commission relied in part on the availability of alternative laws and enforcement measures in repealing its Golden West policy, which prohibited the representation of stations by reps owned by competing stations

³⁹ See sample sales presentation attached as Exhibit A hereto.

within the same market.⁴⁰ The same rationale applies here. Relying on existing antitrust laws to deter anticompetitive conduct is consistent with Commission precedent to remove itself from a "primary enforcement role in the area of antitrust compliance" particularly where, as here, the potential for such conduct is remote.⁴¹

C. Eliminating Both the Network Advertising Representation Rule and the Network Control of Advertising Rates Rule Would Have No Significant Impact on Diversity.

Repealing the two rules at issue in this proceeding will have no significant impact on the diversity of television programming. Programming decisions are made by licensees, not by their sales agents. Some sales representatives do offer their client stations advice, when it is solicited, on how certain shows perform or are likely to perform in different markets. Nevertheless, as the Commission recognized even in the 1959 Report and Order adopting the network advertising representation rule, there was never any evidence that network spot sales organizations "abused the rights of an affiliate when giving programming advice." The concern was purely with the "possibility" of diminishing the broadcast licensee's

⁴⁰ Golden West Repeal, 87 F.C.C.2d 668, 49 R.R.2d at 1715 ¶ 32; see also Cross-Interest Policy Statement, 4 F.C.C. Rcd. 2208, 65 R.R.2d 1734, 1743 ¶ 36.

⁴¹ See Elimination of Unnecessary Broadcast Regulations, 59 R.R.2d 1500, 1517 (1986).

freedom of programming choice.⁴² The Commission then acknowledged in the Golden West Repeal that any programming advice by a sales representative is not forced upon its client stations; stations are free not to request their sales representatives' advice, to reject that advice when offered, to change sales representatives, or to retain other programming consultants.⁴³

Because control over programming rests with the stations and not their sales representatives, the Commission concluded in the Golden West Repeal that even the joint representation of two broadcast television stations in a single geographic market will not unduly impede program diversity. If that is so, then certainly the joint representation of a network and its affiliates should not compromise the diversity of programming viewpoints available to television audiences. A station would not lose its control over its own programming decisions merely because its sales representative happened to be a division of the network company with which the station was affiliated. As discussed in Section B above, affiliated stations do not operate at the mercy of their networks, but retain the power to make their own affiliation and programming decisions and thereby to control what is shown on their air.⁴⁴

⁴² 1959 Report and Order, ¶ 72.

⁴³ Golden West Repeal, 87 F.C.C.2d 668, 49 R.R.2d at 1714 ¶ 27.

⁴⁴ Indeed, the inability of networks to dictate programming to affiliates is demonstrated by the fact that the total amount of non-prime time daypart network programs offered to affiliates by

D. Allowing Networks the Opportunity to Represent Their Affiliates Would Enhance Competition and Would Serve the Public Interest.

Allowing networks the opportunity to represent their affiliates would serve the public interest because, rather than impeding competition, it would in fact enhance it. Currently the national advertising rep business is consolidated in the hands of a small number of increasingly large firms serving an ever-growing number of television stations, often by representing more than one station in a single market. If the networks were able to fully participate in the station rep business, they would be in a position to offer their affiliated stations service comparable to or better than the service they currently receive from the few major firms from which the stations can now choose. Rather than being procompetitive, it is anticompetitive to keep potential new competitors such as the networks out of a market that is increasingly consolidated in the hands of a few larger and larger incumbents. This is true even if some affiliates would opt not to sign with network firms for spot representation.

Over the past few decades the number of independently owned, major national rep firms -- i.e., full-service nonspecialty rep firms that represent major English-language

ABC, CBS and NBC has declined since 1977 by 25 hours per week. See PTAR Report and Order at ¶ 106 & n.220; EI PTAR Study at 23 & Appendix D.

commercial broadcast television stations across this country -- has shrunk dramatically from 26 firms in 1960 to 20 in 1981 to 12 in 1990 to only 9 in 1995.⁴⁵ Between 1980 and 1990, Avery-Knodel, CBN, HR Television, Meeker Television, Metro TV Sales, Peters, Griffin, Woodward ("PGW"), Spot Time, Storer Television Sales and Top Market Television -- all of which had been significant national rep firms until that time -- went out of business as national advertising reps.⁴⁶ In 1991, NBC closed its in-house television spot sales department and turned over the sales representation of its owned stations to two existing rep firms, Harrington, Richter & Parsons, Inc. ("HRP") and Petry⁴⁷; and this year, CBS consolidated its owned station national spot sale business with that of Group W Westinghouse.⁴⁸

Over the past few years, through mergers, acquisitions and consolidations, the major national rep firms have become even bigger, swallowing up smaller and mid-size firms and

⁴⁵ These numbers are based in part on Television & Cable Factbook listings and Television Bureau of Advertising membership lists for the relevant years and in part on this company's knowledge of and experience in the national sales rep business. The dwindling number of major national sales rep firms has been reported in the industry press. See, e.g., Electronic Media, Feb. 21, 1994, p. 4.

⁴⁶ Compare Television & Cable Factbook, 1980 edition, pp. 140-a through 151-a, with Television & Cable Factbook, 1990 edition, pp. B-1 through B-9.

⁴⁷ The New York Times, Oct. 7, 1991, p. D9, col. 4; Advertising Age, Oct. 14, 1991, p. 36.

⁴⁸ See Media Week, May 22, 1995, p. 8.

leaving the remaining moderate-size firms with a shrinking set of clients. In 1992, Katz Communications, a national television rep firm billing about \$1 billion a year, made news by acquiring its competitor, Seltel (a \$350 million a year business representing 108 stations), giving the company access to new major markets and a "dual revenue stream" in many markets.⁴⁹ This year, Katz formed yet another unit to represent the Chris-Craft Industries (United Television Network) owned stations, some of which had been represented by other rep firms before then, thereby gaining four more stations and another \$50 million in annual billings.⁵⁰ In 1994, in another major combination, Cox (the owner of TeleRep, a rep firm then doing a \$1.1 billion-a-year business representing 67 U.S. stations) purchased another leading national rep firm, HRP, which was then doing about \$330 million a year representing 41 television stations.⁵¹ According to some analysts, this consolidation process, "with network in-house and smaller companies going out of business

⁴⁹ Broadcasting, March 9, 1992, p. 18; Broadcasting, Jan. 20, 1992, p. 6; Electronic Media, Jan. 13, 1992, p. 1.

⁵⁰ Broadcasting & Cable, March 20, 1995, p. 46; Media Week, March 20, 1995, p. 8. Katz is also a major player in the radio national rep business and "risk[ed] the ire of its broadcast stations clients" a few years ago by getting into the cable spot rep business as well. Multichannel News, Sept. 23, 1991, p. 5; Broadcasting, Jan. 13, 1992, p. 6.

⁵¹ Variety, Sept. 12-18, 1994, p. 72.

or getting swallowed up by bigger players," is "not yet finished."⁵²

As of today, there are only nine major national advertising rep firms left. Of those nine, four -- the Capital Cities/ABC National TV Sales group, Group W Westinghouse/CBS, New World and Adam Young -- now represent primarily a select group of stations that their companies own. A fifth firm, MMT, controls a shrinking share of the market with approximately 21 stations and has been the target of speculation that it is now ripe for a takeover.⁵³ Four rapidly growing giants -- Katz-Seltel-UTN with 356 stations, TeleRep-HRP with 121 stations, Petry with 114 stations, and Blair with 139 stations -- now command the vast bulk of the national advertising rep business throughout the country.⁵⁴

Meanwhile, the number of television stations in major markets has grown dramatically. As mentioned above, the number of full-power commercial television stations nationwide has more than doubled since the network advertising representation rule was adopted, growing from a mere 510 stations in 1959 to 677 in 1969-70 to 734 in 1979-80 to 883 in

⁵² Electronic Media, Feb. 21, 1994, p. 4.

⁵³ Television & Cable Factbook, 1995, pp. H-36 through H-37 (figures are as of August 1994); Broadcasting & Cable, March 20, 1995, p. 46.

⁵⁴ Television & Cable Factbook, 1995, pp. H-33 through H-40 (figures are as of August 1994).